

ASSEMBLY BILL

No. 952

Introduced by Assembly Member Mullin

February 22, 2007

An act to amend Section 1366 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 952, as introduced, Mullin. Common interest developments: assessments: low- and moderate-income residents.

The Davis-Stirling Common Interest Development Act provides for the creation and regulation of common interest developments. Existing law requires an association established pursuant to the act to levy regular and special assessments sufficient to perform its obligations under the governing documents and the act. Existing law places specified limitations on the amount by which the board may increase regular assessments, and levy special assessments, without a vote complying with certain procedural requirements. Existing law exempts assessments for emergency situations, as described, from these limitations.

This bill would, in addition, prohibit the board of directors from imposing a special assessment, including an emergency assessment, or an increase in the regular assessment of more than 2% on units that are required by law to be provided to low- or moderate-income purchasers without a vote of the owners of those units in accordance with specified procedural requirements.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1366 of the Civil Code is amended to read:

1366. (a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title. However, annual increases in regular assessments for any fiscal year, as authorized by ~~subdivision (b)~~ subdivisions (b) and (c), shall not be imposed unless the board has complied with subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the approval of owners, *as specified in subdivisions (b) and (c), constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, “quorum” means more than 50 percent of the owners of an association has the meaning specified in paragraph (2) of subdivision (b) or paragraph (2) of subdivision (c), as appropriate.*

(b) (1) Notwithstanding more restrictive limitations placed on the board by the governing documents, *and subject to the limitations specified in subdivision (c)*, the board of directors may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association’s preceding fiscal year or impose special assessments ~~which~~ *that* in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. ~~For the purposes of this section, quorum means more than 50 percent of the owners of an association. This section subdivision~~ does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

(1)

(A) An extraordinary expense required by an order of a court.

(2)

1 (B) An extraordinary expense necessary to repair or maintain
2 the common interest development or any part of it for which the
3 association is responsible where a threat to personal safety on the
4 property is discovered.

5 ~~(3)~~

6 (C) An extraordinary expense necessary to repair or maintain
7 the common interest development or any part of it for which the
8 association is responsible that could not have been reasonably
9 foreseen by the board in preparing and distributing the pro forma
10 operating budget under Section 1365. However, prior to the
11 imposition or collection of an assessment under this subdivision,
12 the board shall pass a resolution containing written findings as to
13 the necessity of the extraordinary expense involved and why the
14 expense was not or could not have been reasonably foreseen in
15 the budgeting process, and the resolution shall be distributed to
16 the members with the notice of assessment.

17 (2) *For the purposes of this subdivision, "quorum" means more*
18 *than 50 percent of the owners of an association.*

19 (3) *For the purposes of this subdivision, "owners" shall not*
20 *include the owners of units required by law to be provided to low-*
21 *and moderate-income purchasers.*

22 (c) (1) *The board of directors may not impose any of the*
23 *following assessments on units that are required by law to be*
24 *provided to low- or moderate-income purchasers without the*
25 *approval of owners of those units, constituting a quorum, casting*
26 *a majority of the votes of the owners of those units at a meeting*
27 *or election of the association conducted in accordance with*
28 *Chapter 5 (commencing with Section 7510) of Part 3 of Division*
29 *2 of Title 1 of the Corporations Code and Section 7613 of the*
30 *Corporations Code:*

31 (A) *A special assessment, including an assessment for emergency*
32 *situations.*

33 (B) *A regular assessment that is more than 2 percent greater*
34 *than the assessment imposed on those units for the association's*
35 *preceding fiscal year.*

36 (2) *For the purposes of this subdivision, "quorum" means more*
37 *than 50 percent of the owners of units required by law to be*
38 *provided to low- and moderate-income purchasers.*

39 ~~(e)~~

1 (d) Regular assessments imposed or collected to perform the
2 obligations of an association under the governing documents or
3 this title shall be exempt from execution by a judgment creditor
4 of the association only to the extent necessary for the association
5 to perform essential services, such as paying for utilities and
6 insurance. In determining the appropriateness of an exemption, a
7 court shall ensure that only essential services are protected under
8 this subdivision.

9 This exemption shall not apply to any consensual pledges, liens,
10 or encumbrances that have been approved by the owners of an
11 association, constituting a quorum, casting a majority of the votes
12 at a meeting or election of the association, or to any state tax lien,
13 or to any lien for labor or materials supplied to the common area.

14 ~~(d)~~

15 (e) The association shall provide notice by first-class mail to
16 the owners of the separate interests of any increase in the regular
17 or special assessments of the association, not less than 30 nor more
18 than 60 days prior to the increased assessment becoming due.

19 ~~(e)~~

20 (f) Regular and special assessments levied pursuant to the
21 governing documents are delinquent 15 days after they become
22 due, unless the declaration provides a longer time period, in which
23 case the longer time period shall apply. If an assessment is
24 delinquent the association may recover all of the following:

25 (1) Reasonable costs incurred in collecting the delinquent
26 assessment, including reasonable attorney's fees.

27 (2) A late charge not exceeding 10 percent of the delinquent
28 assessment or ten dollars (\$10), whichever is greater, unless the
29 declaration specifies a late charge in a smaller amount, in which
30 case any late charge imposed shall not exceed the amount specified
31 in the declaration.

32 (3) Interest on all sums imposed in accordance with this section,
33 including the delinquent assessments, reasonable fees and costs
34 of collection, and reasonable attorney's fees, at an annual interest
35 rate not to exceed 12 percent, commencing 30 days after the
36 assessment becomes due, unless the declaration specifies the
37 recovery of interest at a rate of a lesser amount, in which case the
38 lesser rate of interest shall apply.

39 ~~(f)~~

1 (g) Associations are hereby exempted from interest-rate
2 limitations imposed by Article XV of the California Constitution,
3 subject to the limitations of this section.

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